

***(Missing information on this page will be inserted before award.)***

## **Technology Investment Agreement**

*Between*

THE UNITED STATES OF AMERICA  
AF RESEARCH LABORATORY  
***(Name and Street Address of Laboratory)***

*and*

***(Name and street address of Recipient)***

*Concerning*

***(Description of Award)***

*Agreement No.:*

*Total Amount of the Agreement:*           \$0.00

*Government share:*           \$0.00

*Recipient share:*           \$0.00

*Authority:* 10 U.S.C. 2358 ***(if award is a cooperative agreement)*** or 10 U.S.C. 2371 ***(if an other transaction)***

*Effective Date:*

*Catalog of Federal Domestic Assistance number:* 12.800

*Notice:*

*For (Recipient's name*                      *For the United States of America*

\_\_\_\_\_  
*Name:*

*Title:*                      Agreements Officer

***(TIA, consortium, 18 May 01)***

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#### **1.010 ORDER OF PRECEDENCE (APR 2000)**

In the event of a conflict between the terms of this agreement and other governing documents, the conflict shall be resolved by giving precedence in descending order as follows:

- (a) DDR&E Memorandum, Revision 2 to Guidance on Technology Investment Agreements, 3 Feb 1999;
- (b) The articles in this agreement; and
- (c) The attachments to this agreement, if any.

#### **1.020 ADMINISTRATIVE RESPONSIBILITIES (APR 2000) *(Fill-ins to be completed before award.)***

- (a) Government points of contact are:

Agreements Officer:

Business Point of Contact:

Agreements Administration Office:

Government Program Manager:

Payment Office:

Servicing Staff Judge Advocate's office (for invention reporting):

- (b) Consortium points of contact are:

Consortium Administrator:

Consortium Program Manager:

#### **2.020 TERM OF THE AGREEMENT (APR 2000)**

The term of this agreement is \_\_\_\_\_ ***(to be determined)*** months, commencing on the effective date shown on the first page of the agreement. If all funds are expended prior to the end of the term (including recipient contributions, both cash and in-kind), the parties have no obligation to continue and may elect to cease performance at that point. Articles in this agreement which by their express terms or by necessary implication, apply for periods of time other than as specified in this article shall be given effect, notwithstanding this article.

#### **2.030 TERMINATION (APR 2000)**

(a) The agreements officer may terminate this agreement by written notice to the consortium upon a finding that the consortium or a consortium member has failed to comply with the material provisions of this agreement.

(b) Additionally, this agreement may be terminated by either party upon written notice to the other party. Such written notice shall be preceded by consultation between the parties. If the consortium

initiates the termination, written notification shall be provided to the agreements officer at least 30 days prior to the requested effective date. The notification shall state the reasons for the termination, the requested effective date, and, if a partial termination, the portion to be terminated. If the agreements officer determines, in the case of a partial termination, that the reduced or modified portion of the award will not accomplish the purpose for which the award was made, the agreements officer may terminate the award in its entirety.

(c) The Government and the consortium will negotiate in good faith an equitable reimbursement for work performed toward accomplishment of program goals. The Government will allow full credit to the consortium for the Government share of the obligations properly incurred by the consortium prior to termination, and those noncancellable obligations that remain after the termination. The cost principles and procedures described in the article entitled Cost Principles shall govern all costs claimed, agreed to, or determined under this article.

(d) If this agreement is incrementally funded, it may be terminated in the absence of additional government funding as set forth in the article entitled Incremental Funding.

(e) In the event of a termination, the Government shall have a paid-up Government purpose license in any subject invention, copyright work, and data made or developed under this agreement.

#### **2.040 EXTENDING THE TERM (APR 2000)**

If the parties agree, the term of this agreement may be extended if funds are available and research opportunities reasonably warrant. Any extension shall be formalized through modification of the agreement by the agreements officer and the consortium.

#### **3.011 SCOPE AND MANAGEMENT OF THE PROGRAM (APR 2000)**

(a) This agreement recognizes the relationship contemplated in the document identified as \_\_\_\_\_ (***title of consortium Articles of Collaboration***), which binds consortium members and brings them within the scope of this agreement. The Government and the consortium are bound to each other by a duty of good faith and best effort to achieve the goals of this agreement. This agreement is not intended to be, nor shall it be construed as, by implication or otherwise, a partnership, a corporation, or other business organization.

(b) The consortium shall perform a coordinated research and development program carried out in accordance with the statement of work entitled \_\_\_\_\_ (***title of Statement of Work***), Attachment 1 to this agreement. The consortium shall submit all documentation required by Part 7, Technical and Financial Reporting.

(c) The overall management, including technical, programmatic, reporting, financial and administrative matters, of the coordinated research program established under this agreement shall be accomplished by the consortium. The Government program manager will interact with the consortium to promote effective collaboration between the consortium and the Government. Changes to this agreement that would result in (1) a change in the scope or the objective.

#### **3.020 PROGRAM MANAGEMENT PLANNING PROCESS (APR 2000)**

(a) The Program Plan provides a detailed schedule of project activities, commits the consortium to use its best efforts to meet specific performance objectives, includes forecasted expenditures and describes the payable milestones if applicable. The Program Plan will consolidate all prior adjustments in the program schedule, including revisions/modifications to payable milestones if applicable.

(b) For the first agreement year, the consortium will follow the plan as set forth in the Statement of Work (or consortium's proposal), and the attached Schedule of Payable Milestones (***delete reference to Payable Milestones if paying by reimbursement***)

(c) The plan shall be updated, with Government program manager involvement, in each subsequent agreement year to reflect any changes necessary for conducting research.

### **3.030 CONSORTIUM ADMINISTRATION (APR 2000)**

(a) In accordance with the Articles of Collaboration, the consortium member that will act on behalf of the consortium in executing this agreement, and any future modifications to it, is the consortium program administrator, \_\_\_\_\_ (***Name of consortium administrator***). All financial transactions between the Government and the consortium, including payment, will be made with the consortium administrator.

(b) The CMC will immediately notify the agreements officer in writing if at any time the Articles of Collaboration are changed such that these duties are assigned to another member.

### **3.040 CONSORTIUM MANAGEMENT COMMITTEE (APR 2000)**

(a) In accordance with the Articles of Collaboration, the CMC shall comprise one representative from each consortium member, and may bind the consortium members in project decisions. However, the following CMC decisions are always subject to Government approval:

(1) Changes to the Articles of Collaboration if such changes substantially alter the relationship of the consortium as originally agreed upon when this agreement was executed.

(2) Changes to, or elimination of, any Government funding allocation to any consortium member.

(3) Admission, replacement, or deletion of consortium members.

(b) A quorum of representatives of consortium members is required at all quarterly meetings. In addition, every meeting must include the Government program manager or designee. Other Government personnel, as deemed appropriate, may also participate. All decisions shall be made by (majority/consensus/etc.) vote of the CMC.

### **3.050 MODIFICATIONS (APR 2000) (Applicable when payment is by reimbursement)**

(a) Modifications to this agreement may be proposed by either party. Consortium recommendations for any modifications to this agreement, including justifications to support any changes to the statement of work or consortium's proposal as incorporated by reference and/or the payable milestones, shall be submitted in writing to the government program manager with a copy to the agreements officer. The consortium shall detail the technical, chronological, and financial impact of the proposed modification to the program. Changes are effective only after the agreement has been modified. Only the agreements officer has the authority to act on behalf of the Government to modify this agreement.

(b) The agreements officer or administrative agreements officer may unilaterally issue minor or administrative agreement modifications (e.g., changes in the paying office or appropriation data, or changes to Government personnel identified in the agreement, etc).

**(OR)**

### **3.051 MODIFICATIONS - PAYABLE MILESTONES (APR 2000) (Applicable when payable milestones are used.)**

(a) Modifications to this agreement may be proposed by either party. Consortium recommendations for any modifications to this agreement, including justifications to support any changes to the statement of work or consortium's proposal as incorporated by reference and/or the payable milestones, shall be submitted in writing to the government program manager with a copy to the agreements officer. The consortium shall detail the technical, chronological, and financial impact of the proposed modification to the program. Changes are effective only after the agreement has been modified. Only the agreements officer has the authority to act on behalf of the Government to modify this agreement.

(b) The agreements officer or administrative agreements officer may unilaterally issue minor or administrative agreement modifications (e.g., changes in the paying office or appropriation data, or changes to Government personnel identified in the agreement, etc).

(c) The Government is not obligated to pay for additional or revised payable milestones until the attached Schedule of Payable Milestones is formally revised by the agreements officer and made part of this agreement.

### **3.060 PROPERTY (APR 2000)**

(a) Consortium may purchase real property or equipment in whole or in part with federal funds under an award only with the prior approval of the agreements officer (except that additional approval is not required for such items included in the proposed/negotiated budget at the time of award).

(b) Equipment is defined as tangible nonexpendable personal property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

(c) Title to all real property and equipment purchased by the consortium or members under this agreement is vested in the consortium subject to the conditions that the consortium:

(1) Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project.

(2) Not encumber the property without approval of the agreements officer.

(3) Use and dispose of the property in accordance with DoDGARS 34.21, subparagraph (d) and (e).

### **3.070 PROPERTY MANAGEMENT (APR 2000)**

The consortium's property management system shall comply with DoDGARS 34.23.

### **4.010 COST PRINCIPLES (APR 2000) (Preferred approach; applicable if FAR and DFARS cost principles apply.)**

(a) The cost principles in 48 CFR31 and 48 CFR 231 effective on the date of this agreement apply.

(b) The parties recognize that the consortium, as a conduit, does not incur nor does it allocate any costs of its own to the consortium member costs directly incurred pursuant to this agreement.

(OR)

**4.011 COST PRINCIPLES - COMMERCIAL (APR 2000) *(Applicable if FAR and DFARS cost principles do not apply.)***

(a) Federal funds and funds counted as the consortium's cost share or match shall be used only for costs that:

(1) A reasonable and prudent person would incur, in carrying out the project contemplated by this agreement; and

(2) Are consistent with the purposes stated in the governing Congressional authorizations and appropriations.

(b) The parties recognize that the consortium, as a conduit, does not incur nor does it allocate any costs of its own to the consortium member costs directly incurred pursuant to this agreement.

**4.020 STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS - COMMERCIAL (APR 2000) *(Applicable if recipient's financial management system does not comply with DoDGARs)***

(a) The consortium members shall maintain adequate records to account for the control and expenditure of Federal funds received and the consortium's cost sharing or matching required under this agreement.

(b) The consortium members shall establish and maintain accounting systems that:

(1) Comply with Generally Accepted Accounting Principles.

(2) Control and properly document all cash receipts and disbursements.

(OR)

**4.021 STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS (APR 2000) *(Applicable if recipient's financial management system complies with the DoDGARs.)***

The consortium members shall establish or use existing financial management systems that comply with Generally Accepted Accounting Principles (GAAP) and DoDGARs 34.11.

**4.030 AUDIT (APR 2000)**

(a) If a consortium member expends \$300,000 or more in one year under Federal awards they shall have an audit performed for that year by an independent auditor, in accordance with DoDGARs 34.16. The audit should be made a part of the regularly scheduled, annual audit of the consortium member's financial statements. However, the consortium member may have Federal awards separately audited, if it elects to do so unless prohibited by Federal laws or regulations.

(b) The consortium shall provide a copy of the auditor's report to the agreements officer and the agreements administration office.



#### 4.041 RETENTION AND ACCESS REQUIREMENTS TO RECORDS (APR 2000)

The consortium member's financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained and access to them permitted in accordance with DoDGARs 34.42.

#### 4.051 ALLOTTED FUNDING - INCREMENTALLY FUNDED (APR 2000)

##### PAYMENT INSTRUCTIONS FOR MULTIPLE ACCOUNTING CLASSIFICATION CITATIONS:

The following funds are allotted to this agreement. This is a multiple funded agreement and additional ACRNs will be assigned and payment instructions revised when new accounting classifications are available. Pay in the following order up to the limit specified for each ACRN:

ACRN	FUND CITE(S)	AMOUNT
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#### 4.060 INCREMENTAL FUNDING (APR 2000)

(a) The Government's share for full performance of this award is \_\_\_\_\_ (**Government share**). Of this amount, only \_\_\_\_\_ (**Total amounted allotted**) is allotted and currently available for payment. In no event is the Government obligated to reimburse the consortium for expenditures in excess of the total funds allotted by the Government. The Government anticipates that from time to time additional amounts will be allotted to this agreement by unilateral modification, until the total Government share is fully funded.

(b) The parties agree that if additional funds are not allotted, this agreement may be terminated. The consortium is not obligated to continue performance or otherwise incur costs in excess of the amount then allotted by the Government to the agreement plus the consortium's corresponding share, until the agreements officer notifies the consortium in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this agreement. When and to the extent that the amount allotted by the Government to the agreement is increased, any costs the consortium incurs before the increase that are in excess of the amount previously allotted by the Government to the agreement plus the consortium's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the agreements officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

#### 4.070 PAYMENT - REIMBURSEMENT (APR 2000) (*Applicable if payment is by reimbursement*)

(a) The consortium shall be reimbursed by submitting Requests for Advance or Reimbursement (SF 270s) (**or other invoice as agreed to**). The original and two copies of each request shall be submitted to the agreements administration office.

(b) This award is subject to the electronic funds transfer (EFT) payment method. To be paid, the consortium must submit a Payment Information Form (Standard Form (SF) 3881) to the payment office identified in the article entitled Administrative Responsibilities unless that payment office currently has the information (e.g., bank name and account number) needed to pay the consortium by EFT. The SF-3881 is available at <http://www.onr.navy.mil/02/024/forms/default.htm>.

(c) Final payment will not be made until after receipt of an acceptable final report by the Government program manager.

#### **4.072 PAYMENT - PAYABLE MILESTONES (APR 2000) (Applicable if payment is by milestones.)**

(a) The consortium shall be paid for each payable milestone accomplished in accordance with the attached Schedule of Payable Milestones and the procedures in this article.

(b) The consortium shall document the accomplishment of each payable milestone by submitting or otherwise providing the payable milestone report required by the article entitled Payable Milestone Reports and Invoices. The Government program manager will review the report, and provide written verification of the accomplishment of the payable milestone to the administrative agreements officer. After receipt of milestone verification, the administrative agreements officer will approve the payment in writing and forward the invoice to the payment office within 30 days of receipt.

(c) It is recognized that the quarterly accounting of current expenditures reported in the "Quarterly Business Status Report" submitted in accordance with the article entitled Quarterly Reports may not match the payable milestones until submission of the Final Report. Payable milestones may be revised during the course of the program to reflect current and revised projected expenditures.

(d). It is acknowledged that the amounts of the payable milestones are based on estimates and the actual expenditures may vary from the predetermined amount. A consortium may, in such a case, receive a payment that exceeds the amount expended, therefore receiving a cash advance toward the resources needed to accomplish the next milestone. The consortium therefore agrees to:

(1) Maintain in an interest-bearing account any payment received in advance of needs to disburse the funds for program purposes unless one of the following applies:

(i) the consortium receives less than \$120,000 in Federal awards per year;

(ii) the best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on such cash advances; or,

(iii) the depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources for the project; and

(2) Remit annually the interest earned to the agreements administration office made payable to the U.S. Treasury.

(e) This award is subject to the electronic funds transfer (EFT) payment method. To be paid, the consortium must submit a Payment Information Form (Standard Form (SF) 3881) to the payment office identified in the article entitled Administrative Responsibilities unless that payment office currently has the information (e.g., bank name and account number) needed to pay the consortium by EFT. The SF-3881 is available at <http://www.onr.navy.mil/02/024/forms/default.htm>.

(f) Final payment will not be made until after receipt of an acceptable final report by the Government program manager.

#### **4.081 PROGRAM INCOME - RESEARCH (APR 2000)**

(a) All program income earned during the project period shall be added to funds committed to the project by the Government and the consortium and be used to further eligible program objectives.

(b) The consortium has no obligation to the Government for program income earned after the end of the project period.

(c) The consortium will have no obligation to the Government for program income earned from license fees and royalties for copyrighted material, patents patent applications, trademarks and inventions produced under the agreement.

(d) The consortium may deduct costs associated with generating program income from gross income to determine program income, provided these costs are not charged to the agreement.

**4.090 COST SHARING AND MATCHING (APR 2000) *(Preferred approach; applicable if FAR and DFARs cost principles apply. See article entitled Cost Principles.)***

(a) The parties estimate that the research and development work under this agreement can only be accomplished with the consortium aggregate resource contribution of \$\_\_\_\_\_ **(total receipt share)** throughout the term of this agreement. The consortium agrees to provide the resources in the manner shown in the attached Schedule of Cost Sharing and Matching. Failure of either party to provide its respective total contribution may result in a unilateral modification to the agreement by the agreements officer to reflect a proportional reduction in funding for the other party.

(b) The consortium's contributions may count as cost sharing or matching only to the extent that they comply with DoDGARs 34.13.

**4.091 COST SHARING AND MATCHING - COMMERCIAL (APR 2000) *(Applicable if FAR and DFARs cost principles do not apply. See article entitled Cost Principles - Commercial.)***

(a) The parties estimate that the research and development work under this agreement can only be accomplished with the consortium aggregate resource contribution of \$\_\_\_\_\_ **(total receipt share)** throughout the term of this agreement. The consortium agrees to provide the resources in the manner shown in the attached Schedule of Cost Sharing and Matching. Failure of either party to provide its respective total contribution may result in a unilateral modification to the agreement by the agreements officer to reflect a proportional reduction in funding for the other party.

(b) The consortium's contributions may count as cost sharing or matching only to the extent that they:

- (1) are verifiable from the consortium's records,
- (2) are not included as contributions for any other federally-assisted project or program,
- (3) are necessary and reasonable for proper and efficient accomplishment of the program objectives,
- (4) are allowable under the applicable cost principles,
- (5) are not paid by the Federal government under another award except:
  - (i) costs that are authorized by Federal statute to be used for cost sharing or matching; or
  - (ii) Independent research and development (IR&D) costs.
- (6) are provided for in the approved budget, when approval of the budget is required by the agreement.
- (7) are approved by the agreements officer if they are real property or equipment and the contributions' value is to exceed depreciation or use charges during the program period.

#### **5.010 CLAIMS, DISPUTES AND APPEALS (APR 2000)**

(a) General. Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this article. Department of Defense (DoD) policy is to resolve issues through discussions and mutual agreement at the agreements officer's level prior to submission of a claim. Where unassisted negotiations fail to resolve issues in controversy, the parties agree to consider the use of Alternative Dispute Resolution (ADR) procedures to the maximum extent practicable.

(b) Alternative Dispute Resolution. ADR should be used whenever practicable as a relatively inexpensive and expeditious procedure to resolve issues in controversy. ADR is any mutually agreed to voluntary means of settling issues in controversy without resorting to formal administrative appeals or litigation. ADR techniques shall be mutually agreed to and may be used at any appropriate time during the process.

(c) Claims Resolution Process. When a claim cannot be resolved by the parties, the parties agree to use the procedures identified in DoDGARs 22.815 as the administrative process to resolve claims, disputes and appeals. For purposes of this article the Grant Appeal Authority will be AFRL/\_\_\_\_ ***Cognizant AFRL technology directorate office symbol***.

(d) Non-exclusivity of Remedies. Nothing in this article is intended to limit a consortium's right to any remedy under the law.

#### **6.021 INVENTIONS (APR 2000)**

(a) The clause entitled "Patent Rights (Small Business Firms and Nonprofit Organizations (37 CFR 401.14))" is hereby incorporated by reference and is modified as follows: replace the word "contractor" with "consortium"; replace the words "agency," "Federal Agency" and "funding Federal Agency" with "government"; replace the word "contract" with "agreement"; replace the heading "(g) SUBCONTRACTS" with "(g) LOWER TIER AGREEMENTS"; delete paragraphs (g)(2) and (g)(3); and replace the text of paragraph (g)(1) with the following text: "The consortium will include this clause, suitably modified to identify the parties, in all lower tier agreements (including the Articles of Collaboration where "consortium" shall be replaced by "consortium member"), regardless of tier, for experimental, developmental or research work. Each subrecipient (including a consortium member) will retain all rights provided for the consortium in this clause, and the consortium will not, as part of the consideration for awarding a subrecipient (or consortium member) award, obtain rights in a subrecipient's (or consortium member's) subject inventions." Paragraph (L), Communications, point of contact on matters relating to this clause will be the servicing Staff Judge Advocate's office identified in the article entitled Administrative Responsibilities.

(b) The consortium shall file Invention (Patent) Reports as of the close of the performance year and at the end of the term for this agreement. Annual reports are due 60 days after the end of each year of performance and final reports are due 90 days after the expiration of the final performance period. The consortium shall use DD Form 882, Report of Inventions and Subcontracts, to file an inventions report. Negative reports are also required. The consortium shall submit the original and one copy to the servicing Staff Judge Advocate's office, one copy to the agreements administration office, and one copy to the agreements officer, if different from the agreements administration office.

#### **6.030 DATA RIGHTS (APR 2000)**

(a) Definitions

"Government purposes", as used in this article, means any activity in which the United States Government is a party, including cooperative agreements with international or multinational defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose data for commercial purposes or authorize others to do so.

"Government purpose rights", as used in this article, means the right to -

(1) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(2) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

"Unlimited rights", as used in this article, means rights to use, modify, reproduce, perform, display, release, or disclose data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

"Data", as used in this article, means recorded information, regardless of form or method or recording, which includes but is not limited to, technical data, software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions included under the article entitled Inventions.

"Practical application", as used in this article, means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(b) Allocation of Principal Rights

(1) Ownership rights to data generated under this agreement shall vest in the consortium. This agreement shall be performed with mixed Government and consortium funding and the parties agree that in consideration for Government funding, the consortium intends to reduce to practical application items, components and processes developed under this agreement.

(2) The consortium agrees to retain and maintain in good condition until \_\_\_\_ **(to be determined)** years after completion or termination of this agreement, all data necessary to achieve practical application. In the event of exercise of the Government's march-in rights as set forth under the article entitled Inventions, the consortium agrees, upon written request from the Government, to deliver at no additional cost to the Government, all data necessary to achieve practical application within 60 days from the date of the written request. The Government shall have unlimited rights to this delivered data.

(3) With respect to data delivered pursuant to Part 7 of this agreement, Technical and Financial Reporting, the government shall receive Government purpose rights.

(c) Marking of Data.

(1) Pursuant to paragraph (b)(3) above, any data delivered under this agreement shall be marked with the following legend:

"Government Purpose Rights"

Agreement No. \_\_\_\_\_  
Recipient's Name \_\_\_\_\_  
Recipient's Address \_\_\_\_\_  
\_\_\_\_\_

(2) The Government may use, modify, reproduce, release, perform, display or disclose these data within the Government without restriction, and may release or disclose outside the Government and authorize persons to whom such release or disclosure has been made to use, modify, reproduce, release, perform, display or disclose that data for United States Government purposes, including competitive procurement."

(3) Any trade secrets and commercial or financial information the consortium wishes to protect from release under Freedom Of Information Act (FOIA) requirements must be marked with a legend identifying it as privileged or confidential information.

(d) Lower Tier Agreements. The consortium shall include this article, suitably modified to identify the parties, in all subcontracts or lower tier agreements (including the Articles of Collaboration where "consortium" shall be replaced by "consortium member"), regardless of tier, for experimental, developmental, or research work.

#### **6.040 FOREIGN ACCESS TO TECHNOLOGY (APR 2000)**

##### **(a) Definitions**

"Foreign firm or institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this agreement, any agency or instrumentality of a foreign government, and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

"Know-how" means all information including, but not limited to, discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

"Technology" means discoveries, innovations, know-how and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this agreement.

(b) General. The parties agree that research findings and technology developments in \_\_\_\_\_ **(type of technology)** technology may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this agreement by foreign firms or institutions must be carefully controlled. The controls contemplated in this article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 120 et seq.), the DOD Industrial Security Regulation (DOD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.)

##### **(c) Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.**

(1) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C.2, C.3, and C.4 below shall apply to any transfer of technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of technology. Transfers do not include:

- (i) sales of products or components, or
- (ii) licenses of software or documentation related to sales of products or components, or
- (iii) transfer to foreign subsidiaries of the recipient (recipient participants) for purposes related to this agreement, or
- (iv) transfer which provides access to technology to a foreign firm or institution which is an approved source of supply or source for the conduct of research under this agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this agreement.

(2) The recipient shall provide timely notice to the Government of any proposed transfer from the recipient of technology developed under this agreement to foreign firms or institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the recipient, its vendors, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the recipient.

(3) In any event, the recipient shall provide written notice to the agreements officer and Government program manager of any proposed transfer to a foreign firm or institution at least 60 days prior to the proposed date of transfer. Such notice shall cite this article and shall state specifically what is to be transferred and the general terms of the transfer. Within 30 days of receipt of the recipient's written notification, the agreements officer shall advise the recipient whether it consents to the proposed transfer. In cases where the Government does not concur or 60 days after receipt and the Government provides no decision, the recipient may utilize the procedures under the article entitled Claims, Disputes and Appeals. No transfer shall take place until a decision is rendered.

(4) Except as provided in subparagraph C.1 above and in the event the transfer of technology to foreign firms or institutions is not approved by the Government, but the transfer is made nonetheless, the recipient shall (a) refund to the Government the funds paid for the development of the technology and (b) negotiate a license with the Government to the technology under terms that are reasonable under the circumstances.

(d) Lower Tier Agreements. The recipient shall include this article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, development, or research work.

(e) This article shall remain in effect during the term of the agreement and for \_\_\_\_\_ **(To be determined)** years thereafter.

#### **7.010 QUARTERLY REPORTS (APR 2000)**

(a) The consortium shall submit quarterly reports within 30 days after the completion of each quarter throughout the term of this agreement. The first quarter shall commence on the effective date of the agreement. One copy each shall be provided to the following persons as listed in the article entitled Administrative Responsibilities

- (1) Government Program Manager
- (2) Agreements Officer
- (3) Agreements Administration Office

(b) The report will have two major sections; the Technical Status Report and the Business Status Report (see (1) and (2), below, respectively).

(1) Technical Status Report. The technical status report will detail technical progress to date and report on all problems, technical issues or major developments during the reporting period.

(2) Business Status Report. The business status report shall provide summarized details of the resource status of this agreement. It shall provide the status of the contributions by both parties including a quarterly accounting of actual and projected expenditures compared to budgeted by member. Any major deviations shall be explained with a discussion of proposed actions to address the deviations.

(c) Distribution Statement. In addition to any other required legend, mark all data delivered under this agreement with the following distribution statement that indicates to whom data may be distributed:

***(Appropriate distribution statement to be determined later.)***

***(Agreements officer determines which of following two articles applies.)***

#### **7.030 PAYABLE MILESTONE REPORTS AND INVOICES - TO ADMINISTRATIVE AGREEMENTS OFFICER (APR 2000)**

The consortium shall submit to the Government program manager \_\_\_\_\_ ***(To be determined)*** copies of documentation describing accomplishment of payable milestones. This report, required by the article entitled Payment, shall be sufficient for the Government program manager to verify the accomplishment of the milestone event in accordance with the statement of work. Each report shall have an associated invoice, which shall be submitted concurrently to the agreements officer (see the article entitled Payment). The consortium administrator shall concurrently submit an original and \_\_\_\_\_ ***(To be determined)*** copies of the associated invoice to the administrative agreements officer and a copy to the agreements officer.

#### **7.030 PAYABLE MILESTONE REPORTS AND INVOICES - TO AGREEMENTS OFFICER (APR 2000)**

The consortium shall submit to the Government program manager \_\_\_\_\_ ***(To be determined)*** copies of documentation describing accomplishment of payable milestones. This report, required by the article entitled Payment, shall be sufficient for the Government program manager to verify the accomplishment of the milestone event in accordance with the statement of work. Each report shall have an associated invoice, which shall be submitted concurrently to the agreements officer (see the article entitled Payment). The consortium administrator shall concurrently submit an original and \_\_\_\_\_ ***(To be determined)*** copies of the associated invoice to the agreements officer and a copy to the administrative agreements officer.

#### **7.040 FINAL REPORT (APR 2000)**

(a) Within 60 days of completion or termination of this agreement, the consortium shall submit a Final Report consisting of two parts, one addressing the technical achievements and the second recapping the business/financial aspects of the agreement. The technical portion of the report should be suitable for publication and is to provide a recap of the program, discussing program accomplishments. With the approval of the Government program manager, reprints of published articles may be submitted or attached to the technical portion of the Final Report. The business portion of the report shall contain a separate discussion of total costs incurred, total costs contributed by each consortium member with an explanation for any deviations from the original business plan. The original shall be submitted to the



Government program manager (for subsequent transmission to the DTIC) and one copy to the agreements officer and one copy to the agreements administration office.

(b) The original shall be submitted to the Government program manager (for subsequent transmission to the DTIC) and one copy to the agreements officer and one copy to the agreements administration office.

(c) Distribution Statement. In addition to any other required legend, mark all data delivered under this agreement with the following distribution statement that indicates to whom data may be distributed:

***(Appropriate distribution statement to be determined before award.)***

#### **8.010 USING TECHNICAL INFORMATION RESOURCES (APR 2000)**

To the extent practical, the consortium will use the technical information resources of the Defense Technical Information Center (DTIC) and other Government or private facilities to investigate recent and on-going research and avoid needless duplication of scientific and engineering effort.

#### **8.020 ADMINISTRATIVE REQUIREMENTS FOR SUBAWARDS AND CONTRACTS (APR 2000)**

(a) The consortium shall apply to each subaward the administrative requirements of the DoDGARs applicable to the type of subrecipient. DoDGARs Part 32 shall be applied to awards to universities or other nonprofit organizations, DoDGARs Part 33 shall be applied to awards to state and local governments, and DoDGARs Part 34 shall be applied to for-profit entities.

(b) The consortium, awarding contracts under this agreement, shall insure that contracts awarded contain, as a minimum, the provisions in Appendix A to DoDGARs Part 34.

#### **8.030 PROCUREMENT SYSTEM - (APR 2000) *(Preferred approach; applicable if consortium members' systems comply with the DODGARs)***

The consortium's procurement system shall comply with the requirements identified in DoDGARS 34.31..

***(OR)***

#### **8.031 PROCUREMENT SYSTEM - COMMERCIAL (APR 2000) *(Applicable if consortium members' systems do not comply with the DODGARs)***

The recipient will:

(a) Follow basic principles of business intended to produce rational decisions and fair treatment in all contracts entered into under this agreement.

(b) Comply with federal statutes, executive orders, regulations, and other legal requirements applicable to contracts entered into under this agreement.

#### **8.041 CLOSEOUT (APR 2000)**

Except in cases of termination, closeout, adjustment and collection of amounts due shall be accomplished in accordance with DoDGARs 34.61 through 34.62 and DoDGARs 22.825. Final payment cannot be made nor can the agreement be closed out until the consortium delivers to the Government all disclosures of subject inventions required by this agreement, an acceptable final report pursuant to the

article entitled Final Report, and all confirmatory instruments. The agreements officer may make a settlement for any downward adjustments to the Federal share of costs after closeout reports are received.

#### **9.010 ASSURANCES (FEB 2001)**

(a) By signing or accepting funds under the agreement, the recipient or consortium assures that it will comply with applicable provisions of the following National policies on:

(1) Prohibiting discrimination:

(i) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR part 195;

(ii) On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) as implemented by Department of Health and Human Services regulations at 45 CFR part 90;

(iii) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56;

(2) The Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 (3 CFR, 1971-1975 Comp., p. 799).

(b) The recipient shall obtain assurances of compliance from contractors and recipients at lower tiers.

#### **9.020 U.S. FLAG AIR CARRIERS (NOV 1999)**

Travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942. (See General Services Administration amendment to the Federal Travel Regulations, Federal Register (Vol 63, No. 219, 63417-63421.))

## ATTACHMENT 2

### Cost Sharing Summary and Schedule

The consortium agrees to cost share or match as shown below. This Schedule may be amended annually to reflect changes or updates resulting from the annual program planning process.

1. <b><u>Contribution Summary:</u></b>	Contributor 1	Contributor 2	Contributor N
Cash (including IR&D)	\$	\$	\$
In-Kind	\$	\$	\$
<i>(Show amounts for each category and totals for each contributor.)</i>			
<b>Total Cost Share/Match</b>	\$	\$	\$

#### 2. **Cost Match Contribution Schedule**

<b><u>Contributor</u></b> <i>(List cash or in-kind contributions and totals by contributor at prime or sub tier and date contributions will be provided. Also, provide a total of all contributions. (Use as many rows as necessary))</i>	<b><u>Date of Contribution by Payable Milestone or Task</u></b>	<b><u>Cash</u></b>	<b><u>In-Kind:</u></b>	<b><u>Total</u></b>
Contributor No. 1				
Contributor No. 2 ...				
Contributor No. N				
<b>Total Contribution from all Contributors</b>				

**ATTACHMENT 3**  
**Schedule of Payable Milestones**  
*(Applicable if Payment is by using Payable Milestones.)*

<u>Date/ Month</u>	<u>Task/ Milestone</u>	<u>Description of Task or Payable Milestone</u>	<u>Gov't Payment</u>	<u>Consortium Contribution</u>
<i>(List task or milestone target date)</i>	<i>(List task or Milestone numbers)</i>	<i>(Provide a brief description of task or payable milestone)</i>	<i>(List total amount of Government Payment by task or payable milestone)</i>	<i>(List total amount of Consortium Contribution by task or payable milestone)</i>